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Women and Poverty

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BOOK REVIEW

WOMEN AND POVERTY. Edited by Barbara C. Gelpi, Nancy Hartsock, Clare Novak, and Myra Strober, University of Chicago, 1986. Pp.272, \$10.95 (paperback).

REVIEWED BY MARIE ASHE*

On January 13, 1987, the United States Supreme Court decided the case, *California Federal Savings & Loan Association v. Guerra*.¹ That case presented a significant issue for the law of sex discrimination in employment, namely, whether a state statutory scheme will be permitted—in light of Title VII²—to require provision of disability benefits to pregnant workers without requiring identical provision to non-pregnant employees.³ Both *California Federal* and a related Montana case,⁴ which reached the high court's docket, have evoked extraordinary division within and among feminist and other women's groups. *Amici curiae* briefs representative of those concerned women's groups have differed strenuously over the question of whether definition of pregnancy as a category warranting "special protection" would have positive or negative long-term impact in the effort to move women out of marginal location in the workplace.⁵ It can be anticipated that commentary on the *California Federal* decision will be equally divided, with some writers seeing the decision as an advance and others seeing it as a retreat in the area of sex discrimination policy. Reading *Women and Poverty* leaves one with the impression that the *California Federal* decision—and other adjudicative and legislative action relating to sex discrimination in employment—may actually represent neither steps forward nor steps backward, but rather, a series of side-steppings about the issue of American public policy relating to women's status in the public areas of contemporary society.

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¹ *California Federal Savings & Loan Ass'n v. Guerra*, 55 U.S.L.W. 4077 (U.S. Jan. 13, 1987) (No. 85-494).

² 42 U.S.C. §§ 2000e to -2000e-17 (1982).

³ The benefit in question in *California Fed. Savings & Loan Ass'n* was reinstatement of an employee to her job after a period of up to four months' unpaid absence from work because of pregnancy disability. The employer's requirement to maintain a job opening could be excused if business necessity precluded keeping the position in question open. See CAL. GOV'T. CODE §§ 12900 to -12906 (Deering 1982 & Supp. 1987).

⁴ *Miller-Wohl Co., Inc. v. Commissioner of Labor & Industry*, 692 P. 2d 1243 (Mont. 1984), judgment vacated, 107 S. Ct. 919 (1987).

⁵ *Amici* in support of the state legislation have seen it as compensating for a particular disadvantage suffered by female employees. Those opposing the legislation have argued that the legislation contributes to continued stereotyping of women as in need of "special protection," and that any short-term gain will be undone by long-term ramifications of that stereotyping.

Women and Poverty is a collection of essays dealing with the recent economic experience of women in several different areas of the world. Ortner, in a 1974 contribution to anthropological theory, raised for consideration the marginality of the status of women in every known culture of the past and present.⁶ Reading *Women and Poverty* reminds one of the persistent nature of that marginality and, more distressingly, of the obduracy of the problem of female subordination even in the face of a variety of "reformist" efforts of some duration. The book reports a number of sociological studies which clarify and develop the information which has filtered into popular consciousness under the rubric "feminization of poverty."

It has become commonplace to note that in the United States, at present, women workers' wages average less than two-thirds the wages of male employees. Much less well appreciated is the data reported in *Women and Poverty* exploring the implications and possible motivations of that wage differential. For example, data gathered in the University of Michigan's massive Panel Study of Income Dynamics (PSID), analyzed by Corcoran and others,⁷ demonstrates that the sex related wage differential cannot be accounted for by the "human capital" variables (education, work experience, work continuity, self-imposed job restrictions, and rates of absenteeism) to which it has generally been attributed.⁸ It is startling and sobering to confront the reality that even if men and women were to be in equal situations with regard to those variables, most of the wage differential would remain.

The PSID is a major longitudinal study which has traced the changing economic fortunes of a large and nationally representative sample of American families. Since 1968, the study has followed all individuals who were members of the households included in the original sample, pursuing them through various employment situations and family compositional changes (attributable to deaths, divorces, children moving away from home, etc.). The PSID appears to be uniquely powerful among longitudinal studies in its inclusion of a national sample, years of annual interviews which have focused on work and income, and information

⁶ Ortner, *Is Female to Male as Nature is to Culture?*, WOMAN, CULTURE AND SOCIETY. (1974).

⁷ Corcoran, Duncan, Hill, *The Economic Fortunes of Women and Children: Lessons from the Panel Study of Income Dynamics*, WOMEN AND POVERTY 7-23 (1986).

⁸ Corcoran, Duncan, and Hill point out that employers, economists and recent government policy statements have emphasized an explanation of the wage differential by reference to men's higher level of job-related skills. The "work experience" and "work continuity" advantage of men is attributable to the fact that many women do not work continuously after completing their schooling but intersperse periods of marketplace employment with periods of out-of-marketplace activity devoted to family and child care responsibilities. "Self-imposed job restrictions" refer to the disproportionate female acceptance of lower-paying jobs which allow greater proximity to home or which permit work schedules that accommodate children's needs. The "absenteeism" variable relates to disproportionate female absenteeism for the purpose of providing care for sick children or other family members. See *Id.* at 9.

about the changes experienced by all members of the initial sample.⁹ Analysis of PSID data discloses that the variables of education, work experience, work continuity, self imposed job restrictions, and absenteeism account for only thirty-five percent of the wage difference between white men and white women in the sample, and for only twenty-six percent of the wage difference between white men and black women in the sample.¹⁰ The conclusion which this analysis invites is that the remainder of the wage difference is attributable to "undeserved" factors—a proposition which throws sharply into question two common assumptions: first, the position that women "deserve" to earn less than men because women, willingly or otherwise, limit their investment in career advancement in order to answer family responsibilities; and second, the position that a gradual reduction of the differences in the five examined variables, to be anticipated as women's work histories lengthen, will eliminate the wage gap.

A second major finding of the PSID relating to the present economic condition of American women relates to the impact of divorce upon women and children. It is widely recognized that divorce tends to cause drastic drops in family income and per capita income for women, while marking substantial improvement in economic condition for men. The PSID analysis supports this understanding, and, further, determines that well over eighty percent of the "persistently poor"—defined by examination of the sample population who lived below the poverty level for at least eight years of the decade 1969-1978—are either women or children supported by female heads of households. This finding is of major significance for a society in which forty percent of first marriages are likely to end in divorce.¹¹

A study by Zinn and Sarri of changes in welfare policy implemented in the State of Michigan pursuant to the Omnibus Budget Reconciliation Act of 1981 (OBRA) sheds light on the circumstances of low-income female heads of households who experienced cuts in the supplementary income which had been afforded them through AFDC and Food Stamp benefits prior to 1982.¹² The Zinn and Sarri sample consisted of 279 average of 2.1 dependent children. Within that sample, the median age of female AFDC recipients was thirty-three years; thirty-seven percent were non-white; seventy-five percent had high school degrees; and thirty-percent had some post-secondary education. The average recipient was employed in a low-paying service or retail trade occupation and earned seventy-four percent of her total family income through employment. The average monthly earned income was \$609; the average Food Stamp allotment was \$40; and the average AFDC grant was \$173 per month. The OBRA cuts reduced the average monthly income from \$822 to \$771.¹³

⁹ *Id.* at 7-8.

¹⁰ *Id.* at 12-13, Table 1.

¹¹ *Id.* at 14-20.

¹² Zinn & Sarri, *Turning Back the Clock on Public Welfare*, WOMEN AND POVERTY 25-40.

¹³ *Id.* at 31-34.

Zinn and Sarri found that although most of the welfare recipients in their sample were not victimized by poor education or by large numbers of dependents, they were nonetheless unable to meet basic family needs for food, shelter, clothing and health care when they lost income supplements pursuant to OBRA reductions. Approximately forty percent of the women sampled lacked medical insurance for themselves and their children after implementation of the reductions. Half the families interviewed in the sample ran out of both money and food on a number of occasions after benefits were curtailed.¹⁴

An investigation reported by Pearce reveals that female workers experience discrimination in fringe benefits and other conditions of employment, as well as in wages.¹⁵ Gender-based discrimination occurs in the dispersal of unemployment compensation benefits, a type of publicly subsidized fringe benefit which is made disproportionately available to male "breadwinners." The "domestic quits" category, which defines departures from employment for family-related reasons and ninety-nine percent of whose population is female, is excluded from unemployment compensation by many state statutory schemes. Further, even when unemployment compensation is made available to women, the compensation is lesser than what is received by men, in proportion to women's lower wages. The disadvantages to women, caused by an unemployment compensation system which was not designed to match women's work patterns, have occasioned increasing disparity between female proportion of the unemployed and female proportion of those receiving unemployment benefits. Recent declines have reduced from sixty percent to forty percent the proportion of unemployed female workers receiving unemployment compensation.

A report by Smith examines the areas in which female employment has increased and finds that women's labor has been the major contributor to employment growth in the service sector of the economy, which from 1970-1980 absorbed eighty-six percent of all private sector employment growth in the United States.¹⁶ The highly labor-intensive work process and the highly competitive business environment surrounding service sector expansion has established three attributes of employment in that area: high labor turnover, reliance on part-time work, and low wages. The disproportionate employment of women in this area has created the paradox that while female labor has supported this most rapidly expanding sector of the economy, female employees continue to be the most marginally employed and those subject to the least desirable employment practices.

Feldberg discusses discouraging data indicating that the marginality of women cannot be accounted for by their location in particularly low-wage sectors, any

¹⁴ *Id.* at 36-37.

¹⁵ Pearce, *Toil and Trouble: Women Workers and Unemployment Compensation*, WOMEN AND POVERTY 141-61.

¹⁶ Smith, *The Paradox of Women's Poverty: Wage-Earning Women and Economic Transformation*, WOMEN AND POVERTY 121-40.

more than by an inadequate contribution of "human capital" by female workers.¹⁷ She locates the foundations of marginality in the tradition of gender-based exclusions of women—in every sector—from the "manly" work worthy of greater rewards. Feldberg sees evidence of the undervaluation of female work in a number of anomalies in the relationship among wages, women, and paid work: the lack of relationship between skills involved in women's work and wages paid; the fact that increased demand for women as workers has not led to higher wages for them; the reality that skills demanded for many women's occupations are not recognized and valued as skills; and, finally, a long history of misperception of women as not entitled to "householder" wages.

The data and analyses set out in *Women and Poverty* are indeed startling and disturbing. All the studies reported support the conclusion that employment alone does not eliminate female marginality. The studies thus raise major and difficult questions about measures which might be taken to improve the economic status of women and children. Most of the investigators have interpreted their findings as establishing the necessity of increased earnings for women and that position has generally taken the form of expression of support for the notion of comparable worth.¹⁸

Feldberg has addressed the comparable worth possibility directly and has gone farther than the other contributors in her weighing of the pros and cons of the policy. She has noted that many uncertainties caution against unequivocal advocacy of comparable worth theory, namely: the possibility that comparable worth will have little effect on the overall degree of inequality and hierarchy in society; the possibility that comparable worth might further divide women "stringing them out along the same hierarchy that divides male workers;"¹⁹ and the difficulty of overcoming judicial perspectives which view "the market" as an expression of natural law.²⁰ In spite of the possibility of negative consequences or insurmountable obstacles, Feldberg advocates comparable worth and characterizes that approach as having a potential to "...reach far beyond the liberal framework in which it was conceived and force a rethinking of assumptions underlying gender hierarchy and the dominance of the market."²¹ Perhaps the single most motivating consideration toward comparable worth is the finding of a 1971 government study that "...if working women were paid what similarly qualified men earn, the number of poor families would decrease by half."²²

¹⁷ Feldberg, *Comparable Worth: Toward Theory and Practice in the United States*, WOMEN AND POVERTY, 163-80.

¹⁸ See Corcoran, Duncan, & Hill, *supra* note 7, at 22; Zinn & Sarri, *supra* note 2, at 39; Feldberg, *supra* note 17.

¹⁹ Feldberg, *supra* note 17, at 177.

²⁰ *Id.*

²¹ *Id.* at 180.

²² *Id.* at 164.

It is important that the information compiled in *Women and Poverty* becomes more widely understood by people concerned with issues of gender justice. The data and analyses define the scope and tenacity of the present problem. It seems, however, that the profundity and complexity of the problem are such that it is unlikely to be resolved by the specific policies proposed by the contributors to *Women and Poverty*—and, particularly, by a move in the direction of comparable worth. The facts that the marginality of female employees cannot be accounted for by reference to their location in particular sectors of the economy and that differences in “human capital” contribution will not account for the male/female wage differential, suggest that powerful irrational processes are implicated in the maintenance of women in positions of economic dependence. Appreciation of that reality decreases confidence that the implementation of comparable worth would accomplish more than other reformist measures. The barriers to female achievement of economic equality are multiple, and the removal of one is no guarantee that another will not be erected in its stead.

Feldberg sees radical implications inherent in the comparable worth movement's rejection of gender hierarchy and assesses the merit of that potential as outweighing the various negative potentialities alluded to above. While that potential may certainly exist, none of the analyses in *Women and Poverty* establishes a basis for confidence in it. Indeed, taken as a whole, the studies suggest the opposite: they support a persuasion that comparable worth, if implemented as a single program rather than as one element of an all-encompassing, clearly articulated and newly normative public policy, would have all the limitations of the approaches which have thus far been taken, and the additional possible consequence of reducing the women's movement to a movement of upwardly-mobile middle-class white women.

Feldberg's remarking on judicial unwillingness to tamper with market arrangements which seem “natural” is very much to the point. Indeed, it is precisely such—legislative and judicial—resistance to altering our “assumptions about the possible”²³ that has solidified the gender division in the public and private areas of our lives. In a context in which we lack a coherent public policy relating to sex discrimination in employment, where existing policies have been articulated haphazardly, uncertainly and ambiguously,²⁴ and where female reproductive func-

²³ See Unger, *The Critical Legal Studies Movement*, HARV. L. REV. 561, 667 (1983).

²⁴ I refer, here, to the history of sex discrimination law from the time of the virtually accidental inclusion of sex as a protected category in the Civil Rights Act of 1964; through the treatment of pregnancy discrimination by the U.S. Supreme Court in *Geduldig v. Aiello*, 417 U.S. 484 (1974); and including the Pregnancy Discrimination Act of 1978, whose ambiguities reflect the divided perspectives of its supporters who viewed it, variously, as already implied by Title VII or as new anti-abortion legislation. Civil Rights Act of 1964—Pregnancy Discrimination, Pub. L. No. 95-555, 92 Stat. 2076 (1978), reprinted in §§ 12900 to -12906. LEGISLATIVE HISTORY OF THE PREGNANCY DISCRIMINATION ACT OF 1978, U.S. Government Printing Office, 1979.

tions continue to pose major and highly problematic issues for legislation and adjudication,²⁵ it becomes important to press for wider and more imaginative leaps than the one which might be involved in paying people according to an evaluation of their "worth" to their employers. Moreover, it becomes essential that the attraction which comparable worth presents in a time of frustrated hopes not divert energy from the larger task of achieving true economic equality, without which there can be no meaningful sexual equality.

²⁵ While the *California Fed. Savings & Loan Ass'n* has defined the interaction of Title VII with the California Code provision for unpaid pregnancy disability leave (See CAL. GOV'T. CODE), other issues remain unresolved. These include the permissibility of pregnancy-related benefits not limited to unpaid leave, and the broad issues raised by employers' lay-offs or transfers of pregnant or potentially pregnant employees in the interest of fetal protection.

